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ALEXANDER L. STEVAS,
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No. 82-1800

IN THE

Supreme Court of the United States

October Term, 1982

THE STATE OF CONNECTICUT,

Petitioner,

v.

GEORGIOS ZINDROS,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of Connecticut

PETITIONER'S REPLY BRIEF

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REPLY BRIEF

Pursuant to Rule 22.5, the petitioner submits the following in reply to the respondent's brief in opposition.

I.

THE GOOD FAITH EXCEPTION IS PROPERLY BEFORE THIS COURT FOR REVIEW

Citing *Illinois v. Gates*, —U. S.—, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), the respondent's brief in opposition urges this Court not to grant certiorari because the good faith exception to the exclusionary rule was not pressed or passed upon in the Connecticut Supreme Court.

In *State v. Zindros*, however, the Connecticut Supreme Court acknowledged that the "good faith" exception was briefed and argued by both parties. 189 Conn. 228, 251 n. 29, 456 A.2d 288, 301 n. 29 (1983) (Petition, App. A at 21a n. 29). The Connecticut court went on to hold that the doctrine would not be applicable to this case because "the belief of the officers that the search was proper was unreasonable." 189 Conn. at 255 n. 32, 456 A.2d at 302 n. 32 (Petition, App. A at 24a n. 32). The Connecticut Supreme Court did pass upon the application of this exception to the fourth amendment exclusionary rule, and the petitioner pressed to have the exception adopted and applied to this case in the Connecticut Supreme Court.

The respondent also claims that the record is inadequate for such a review. He states the record contains little, if anything, regarding the subjective g[illegible] of the officers.

The Connecticut Supre[illegible] r found unreasonable under the circumstances "the belief of the [illegible] that the search was proper." 189 Conn. at 255 n. 32, 456 A.2d at 302 n. 32 (Petition, App. A at 24a n. 32). There was ample evidence in the record of the practical and justifiable need for the officers to obtain entry from the landlord who had boarded up the burned-out premises. The record, it is submitted, is adequate for review of this issue.

II.

RECENT DEVELOPMENTS IN THIS COURT SUPPORT THE GRANTING OF THE PETITION

Since this petition was filed this Court has accepted three cases for review involving the doctrine. *See Massachusetts v. Sheppard* (82-963), —U. S.—, 103 S.Ct. 3534 (1983), *granting cert. to* 387 Mass. 488, 441 N.E.2d 725 (1982); *Colorado v. Quintero* (82-1711), —U. S.—, 103 S.Ct. 3535, *granting cert. to* 657 P.2d 948 (Colo. 1983); *United States v. Leon* (82-1771), —U. S.—, 103 S.Ct. 3535, *granting cert. to* 701 F.2d 187 (9th Cir. 1983).[1]

Not one of the accepted cases concerned the officers' reasonable and justifiable reliance upon a third party's consent to search.

The petitioner submits that this Court should grant certiorari in this case as consideration of the good faith belief exception requires consideration of the application of the doctrine as well.

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1. The respondent claims that two of those cases clearly decided not to adopt the "good faith" exception. The respondent seems to argue that the application of the exception to the facts is not worthy of review by this Court. In *Massachusetts v. Sheppard*, the Massachusetts three-judge plurality opinion refused to adopt the exception in view of decisions of this Court, but the concurring opinion refused to find "reasonable" good faith and to adopt the exception. *See Massachusetts v. Sheppard*, 387 Mass. 488, 511-12, 441 N.E.2d 725, 738 (1983) (Liacos, J., concurring, joined by Abrams, J.). In *Colorado v. Quintero*, the dissenting Colorado justice pointed out that the Colorado majority not only rejected the good faith exception but also refused to apply the very similar Colorado "good faith" exception statute to the facts of that case. *See Colorado v. Quintero*, 657 P.2d 948, 953 (1983) (Rovira, J., dissenting).

These cases illustrate that the exception and its application require joint consideration.

CONCLUSION

The petitioner submits that the petition for a writ of certiorari should be granted for the reasons urged in the petition.

Respectfully submitted,

THE STATE OF CONNECTICUT-PETITIONER

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